

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3       MAE YELEY, AL TANDY CHICKLERO   )  
4       (deceased), and ALBERT        )  
       CHICKLERO,                    )

5                   Appellants,        )

6       v.                                )

7       KING COUNTY,                    )

       Respondent.                    )  
       \_\_\_\_\_

PCHB No. 86-128

ORDER GRANTING MOTION  
TO DISMISS

9       On May 23, 1986, King County, through its Department of Public  
10      Works, denied an application for a State Flood Control Zone Permit  
11      from Mae Yeley by Albert Chicklero, for construction of a private  
12      residence on property along the Middle Fork of the Snoqualmie River.

13      Albert Chicklero filed an appeal with the Pollution Control  
14      Hearings Board ("Board") on July 17, 1986. A formal hearing was  
15      conducted on November 10, 1986. Respondent appeared, through its  
16      counsel, Deputy Prosecuting Attorney James L. Brewer. Appellant  
17      Albert Chicklero appeared and represented himself.  
18

1 Present for the Board were Judith A. Bendor, Presiding, and  
2 Lawrence J. Faulk, Chairman. Witnesses were sworn and testified;  
3 exhibits were admitted. The proceedings were recorded. Based upon  
4 review of the testimony and exhibits, the Pollution Control Hearings  
5 Board makes these

6 FINDINGS OF FACT

7 I

8 On October 7, 1983, King County, through its Department of Public  
9 Works, issued a Flood Control Zone Permit (No. KC-247-5) to May [sic.]  
10 Yeley to construct a private residence on a parcel of land in S.E. 1/4  
11 Section 3, Township 23N., Range 8 E. W.M., on the Middle Fork of the  
12 Snoqualmie River, in Snoqualmie Flood Control Zone #5. On February 6,  
13 1985, Albert Chicklero requested an extension of that permit, which  
14 King County granted. The County required, as one of the permit  
15 conditions, that construction be completed on or before December 31,  
16 1985.

17 II

18 Earlier, on February 23, 1983, Ms. Yeley quit-claim-deeded the  
19 property to Albert Chicklero, her son, and to Al Tandy Chicklero, her  
20 grandson, in joint tenancy with the right of survivorship. Al Tandy  
21 Chicklero subsequently died in September 1984.

22 III

23 In April 1986, Mae Yeley by Albert Chicklero applied to King  
24 County for a residential building application to construct a

25 single-family  
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1 residence on the property. King County advised the applicant that a  
2 new flood control zone permit was required before a building permit  
3 could be recommended for approval, because Permit KC-247-5 (as  
4 extended) had expired December 31, 1985. An application was submitted.

5 On May 23, 1986, King County, through Donald LaBelle, Director of  
6 Public Works, denied the flood control zone permit application  
7 pursuant to WAC 508-60-040. The denial in pertinent part states;  
8

9 1. Your proposed building site is located entirely within  
10 the 100-year frequency floodway channel for the Middle Fork  
11 Snoqualmie River as established by the FEMA Flood Boundary  
and Floodway maps.

12 2. The Washington State Administrative Code (WAC) 508-60-040  
states:

13 a. Structures or works located within the floodway  
14 channel must not be designed for or used for either  
(a) human habitation of a permanent nature or (b)  
uses associated with high flood damage potential.

15 . . .  
16 c. The structures or works shall not adversely  
17 influence the regimen of any body of water by  
restricting, altering, hindering, or increasing  
flow of the flood water in the floodway channel.

18 3. Construction of a permanent dwelling on this site would  
19 also violate the rules and regulations of the National Flood  
Insurance Program and the King County Flood Hazard Overzone  
requirements.

20 The denial letter informed Mr. Chickerlo that he had 30 days after  
21 "receipt of this letter" to appeal. Appellant Chicklero received  
22 notice of the denial within a few days of May 23, 1986.

23 IV

24 In a June 2, 1986 letter to Mr. LaBelle, appellant requested that  
25

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1 King County review the denial. The County re-confirmed the denial by  
2 letter dated June 27, 1986, informing Mr. Chicklero that he had 30  
3 days from "receipt of this letter" to appeal to the Board. Feeling  
4 aggrieved, Mr. Chicklero filed an appeal with this Board on July 17,  
5 1986, long after the 30-day appeal period had elapsed from the  
6 original denial.

7 V

8 At the hearing, respondent King County moved to dismiss this  
9 matter for failure to file a timely appeal, pursuant to WAC  
10 371-08-080. Respondent also moved for dismissal, pursuant to WAC  
11 371-08-035, contending that Albert Chicklero was neither a party to  
12 this appeal, nor an attorney-at-law, and therefore appellant was not,  
13 by operation of law, present before the Board at the hearing. The  
14 Board deferred ruling on the motions, and proceeded to hear the case.

15 VI

16 At the hearing, an engineer for King County testified that he had  
17 reviewed the permit applications and related submittals. He visited  
18 the proposed project site and located two benchmarks near the  
19 project. Based upon his review of the file, his field work and  
20 calculations, and using the 1978 Federal Emergency Management Agency  
21 (FEMA) study, the engineer concluded that the project was within the  
22 100-year floodway of the Middle Fork of the Snoqualmie River. We  
23 concur.

24 VII

25 The generally accepted means of assessing the flood danger posed  
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1 by a river is to determine the geographical limits of its channel  
2 ("100-year floodway") during a 100-year flood. A 100-year flood is  
3 one which would occur, on the average, once each 100 years. This  
4 assessment approach is adopted by the statewide flood control  
5 regulations (WAC 508-60-030).

6 VIII

7 Any Conclusion of Law which should be deemed a Finding of Fact is  
8 hereby adopted as such.

9 From these Findings of Fact, the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 We review the proposed flood control zone permit for consistency  
13 with the State Flood Control Zone Act (Chapter 86.16 RCW), and the  
14 rules implementing the Act (Chapter 508-60 WAC). We refer to the  
15 Board's Rules of Practice and Procedure (Chapter 371-08 WAC) in  
16 matters concerning our jurisdiction.

17 II

18 RCW 86.16.085 authorizes the Department of Ecology to delegate to  
19 the counties the authority to administer flood control permit  
20 programs. Such delegated programs shall be administered in accordance  
21 with Chapter 86.16 RCW (RCW 86.16.085(3)). We take judicial notice  
22 that King County has been delegated authority to administer the  
23 program. Therefore, Chapter 508-60 WAC applies to applications to  
24 King County for flood control zone permits.

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III

Under a delegated program, RCW 86.16.085(5) provides that any party aggrieved by a ruling on a permit application may obtain review before the Board in the same manner as for permits issued by the Department of Ecology. Such review is governed by RCW 43.21B.230, as implemented by WAC 371-08-080. That section states in pertinent part that a party shall file a Notice of Appeal:

within thirty days from the date the decision of the department or state agency was communicated to the appealing party.

IV

As the owner of the property, Albert Chicklero is a party "aggrieved" by King County's permit denial, (See WAC 371-08-005), and may appear pro se. We hold that his participation in these proceedings was not solely in a representative capacity.

V

The appeal from King County's May 23, 1986 denial was well-past the 30-day period, and was therefore not timely. No evidence was presented demonstrating any notice problems. (Even the second King County letter of June 27, 1986, re-confirming the denial, was received by appellant outside the 30-day period.) Therefore, this appeal must be dismissed. Timely filing is a jurisdictional requirement which the Board is without decretion to alter.

VI

For purposes of judicial economy, however, we will procede to address the merits of this case. Assuming, arguendo, that the

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County's June 27, 1986 letter constituted the permit denial for purposes of appeal, we nonetheless conclude that the permit should be denied.

## VII

WAC 508-60-040 prohibits the design or use of buildings for permanent human habitation within the floodway or over or in the channel of any body or over or of water or drainway. WAC 508-60-010 defines "floodway" as:

the channel of a water course or drainway and those portions of the flood plain adjoining the channel which are reasonably required to carry out and discharge the flood waters of any water course or drainway.

The proposed project is within the 100-year floodway for the Middle Fork of the Snoqualmie River.

This prohibition in the floodway is also supported by caselaw. Maple Leaf Investors v. Department of Ecology, 88 Wn.2d 726, 565 P.2d 1162 (1977). Nature, itself, has placed appellant's property in the path of floods. 88 Wn.2d at 734. It is this harsh physical reality, and the concomittant over-arking concern for human life, which led to the enactment of laws such as the Flood Control Zone Act.

VIII

NOW THEREFORE IT IS ORDERED:

the motion to dismiss this appeal, based on WAC 371-08-035, is  
DENIED; the motion to dismiss for lack of timeliness is GRANTED.

DONE at Lacey, Washington, this 9<sup>th</sup> day of January, 1987.

POLLUTION CONTROL HEARINGS BOARD



JUDITH A. BENDOR, Presiding,



LAWRENCE J. FAULK, Chairman

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